

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

20-cr-363 (PKC)

-against-

OPINION
AND ORDER

JUDON MCBRIDE,

Defendant.
-----X

CASTEL, U.S.D.J.

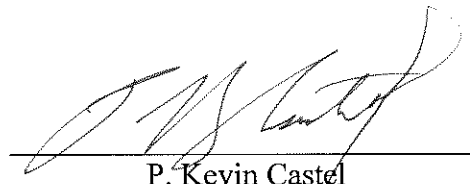
Defendant Judon McBride urges that the verdict form ought to list the option of a “Not Guilty” verdict before that of “Guilty” “so that . . . this will be the first option any juror . . . will see.” (Letter of Martin S. Cohen, April 26, 2021 at 2.) “Our request is grounded in the presumption of innocence. . . .” (*Id.*) The suggestion appears to be based on accepted practice in some courtrooms. *See, e.g. Coleman v. State*, No. 0812 Sept. Term 2014, 2015 WL 5925459 (Md. Ct. Spec. App. July 28, 2015); *State v. Yoo*, 110 Haw. 145, 129 P.3d 1173 (Ct. App. 2006); *but see United States v. Bell*, 750 Fed. App’x 941, 943 (11th Cir. 2018) (the sequence of listing “guilty” before “not guilty” in a verdict form did not “improperly guide the jury” in light of jury instructions about the government’s burden) (summary order).

A judge is granted wide discretion in the formulation of a verdict sheet in a criminal case. *See, e.g., United States v. Applins*, 637 F.3d 59, 82-83 (2d Cir. 2011); *United States v. Ogando*, 968 F.2d 146, 149 (2d Cir. 1992).

This Court declines the invitation to place “not guilty” before “guilty” because it unreasonably invites a form of mental gymnastics by jurors. Jurors are empaneled to decide whether the government has proven each element of a crime by proof beyond a reasonable doubt.

“Not guilty” is the only proper verdict when the government has not met its burden. There is no quantum of evidence or necessary elements for a verdict of “not guilty.” It is not the equivalent of a finding of innocence, but a finding that a charge has not been proven by the requisite burden of proof.¹ A “not guilty” verdict may be based on any of the many ways in which proof of guilt is found lacking. To reach a unanimous verdict of “not guilty,” a jury should consider whether the sufficiency and weight of the credible evidence supports a finding that the government has proved each element of a crime. Listing “not guilty” as the first option invites jurors to weigh non-guilt as a standalone concept, rather than focus, as they should, on the high burden to prove guilt.

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
April 27, 2021

¹ In the trial of Aaron Burr, the jury famously returned the following verdict: “We of the jury say that Aaron Burr is not proved to be guilty under the indictment . . . submitted to us.” Chief Justice Marshall recorded it as a not guilty verdict. Hannah Phalen, Overcoming the Opposition to A Third Verdict: A Call for Future Research on Alternative Acquittals, 50 Ariz. St. L.J. 401, 401 (2018).